

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES H. SEMERTEEN, III AND ROBIN MASSEY

(Case No. 11700)

A hearing was held after due notice on January 25, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the side yard and front yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of ten (10) feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed detached garage, and a variance of 24.8 feet from the thirty (30) feet front yard setback requirement on the west side for a proposed detached garage and lean-to. This application pertains to certain real property is located on the northwest corner of River Bend Drive and Thorogoods Road (911 Address: 101 River Bend Drive, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-5.00-41.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter dated March 23, 2015 from the Applicants, letters dated February 24, 2015, and a survey of the Property dated August 28, 2015.
2. The Board found that the Office of Planning & Zoning received three (3) letters of support to the Application and no correspondence in opposition to the Application.
3. James Semerteen, III and Robin Massey were sworn in to testify about the Application.
4. The Board found that Ms. Massey testified that the Property is a corner lot in River Bend and that the Property is unique. The existing septic system is located in the center of the Property.
5. The Board found that Ms. Massey testified that the Applicants purchased the Property in 2004 and have made no additions or renovations since that time.
6. The Board found that Ms. Massey testified that their neighbor does not object to the Application.
7. The Board found that Ms. Massey testified that the variances requested represent the minimum variances to afford relief and the variances are necessary to enable reasonable use of the Property.
8. The Board found that Ms. Massey testified that the Applicants did not create the difficulty as they did not build the house or place the septic system on the Property.
9. The Board found that Ms. Massey testified that the Applicants explored other locations on the Property to place the garage but the septic system limits the placement options. The proposed garage cannot be built in compliance with the setback requirements.
10. The Board found that Mr. Semerteen testified that the proposed detached garage will measure 20 feet by 30 feet with an 8 feet by 30 feet lean to attached thereto.
11. The Board found that Mr. Semerteen testified that the owner of Lot #3 to the north of the Property has no objection to the Application.

12. The Board found that Mr. Semerteen testified that Koszy Lane is a private road leading to a house on a river and the owner of Koszy Lane does not object to the Application. Koszy Lane is only used for the one property.
13. The Board found that Mr. Semerteen testified that the Applicants access the Property from River Bend Drive. The proposed garage will line up with the existing driveway.
14. The Board found that Mr. Semerteen testified that the proposed garage will be at least ten (10) feet from the existing septic system.
15. The Board found that Mr. Semerteen testified that there are existing pine trees along the rear yard.
16. The Board found that Mr. Semerteen testified that there is no garage attached to the house.
17. The Board found that Mr. Semerteen testified that the garage will enable the Applicants to store items in the garage rather than in their yard. A smaller garage would not afford them enough space for such storage. The Applicants intend to place a car and garage in the garage.
18. The Board found that Mr. Semerteen testified that there is an existing oak tree on the Property which prevents the garage from being moved towards the front yard property line.
19. The Board found that Mr. Semerteen testified that there are similar garages in the area.
20. The Board found that Mr. Semerteen testified that the Applicants cannot access their property from Thorogoods Road or Koszy Lane.
21. The Board found that no parties appeared on January 25, 2016, in support of or in opposition to the Application.
22. The Board voted to leave the case open until February 15, 2016.
23. On February 15, 2016, the Board held a second hearing on this matter.
24. The Board found that Ms. Massey testified that the variances are needed due to the uniqueness of the Property, which is unique because it fronts on three (3) roads. The location of the septic system also makes the Property unique. The Property is smaller than other lots in the in the development.
25. The Board found that Ms. Massey testified that the variances will not adversely affect property values.
26. The Board found that Ms. Massey testified that the road to the rear of the Property is a private drive. The owner of that property is the only one with access to the private drive and has plans of putting a gate up on Koszy Lane to deter vandalism and burglary. The gate will prevent the Applicants from accessing their property from the rear and the only access will be from their driveway.
27. The Board found that Ms. Massey testified that there needs to be enough room to access the backyard and existing septic system which prevents the garage from being placed closer to the dwelling.
28. The Board found that Ms. Massey testified that a garage built in compliance with the Code would not meet the intended need of the Applicants. The proposed garage will provide shelter for their assets which are currently stored outside.
29. The Board found that Mr. Semerteen testified that that the utility lines run from the corner of the porch to the edge of where the garage is proposed to be located.
30. The Board found that Mr. Semerteen testified that the lean-to could be removed but the garage still needs to be located five feet from Koszy Lane so as to provide enough space between the front of the garage and the rear of the house. He is willing to remove the lean-to from the plan and, by removing the proposed lean-to, will not need the side yard variance.

31. The Board found that Mr. Semerteen testified that the through lot setback requirements make the Property unique.
32. The Board found that Mr. Semerteen testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and that the front yard variance is necessary to enable reasonable use of the Property.
33. The Board found that no parties appeared on February 15, 2016, in support of or in opposition to the Application.
34. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application for the front yard variance for a garage met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is bordered on three sides by roads thereby greatly limiting its building envelope. The Property is also unique because it is serviced by a septic system which is located in the center of the rear yard thereby further limiting the building envelope. The limited buildable area available to the Applicants has created an exceptional practical difficulty for the Applicants who seek to construct a garage on the lot. The Board notes that the Property is also smaller than neighboring lots.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existence of roads on three sides of the Property, as well as the placement of the septic system, have created a limited buildable area for the Applicants who seek to construct a garage of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the front yard variance on the west side for the garage is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized garage to be constructed on the Property. The Applicants do not currently have a garage and need the garage to store their car, boat, and other personal items. The Board is convinced that the shape and location of this garage are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual building envelope for the Property. Additionally, the Applicants did not place the septic system on the lot; thereby further limiting the area where a garage could be placed. The Property is bordered on three sides by roads and the uniqueness of the Property has resulted in a limited building envelope on the Property. The Property is also smaller than other lots in the neighborhood. The small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
 - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the garage will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the garage and dwelling. Rather, the Board received letters supporting the Application. The evidence also demonstrates that there are other garages in the neighborhood. While the garage will encroach into the setback area adjoining Koszy Lane, Koszy Lane is a private driveway used for one property and the owner of that property did not object to the

Application. Ultimately, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

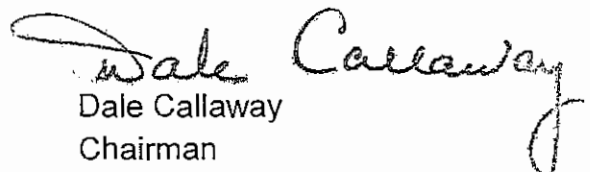
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized garage on the Property. The Applicants have removed the lean-to from the proposal thereby eliminating the need for the side yard variance and the front yard variance for the lean-to.
35. The variance application for the front yard setback on the west side of the Property for the garage was approved but the side yard setback on the north side of the Property was denied because the lean-to was not necessary to afford reasonable use of the Property. The need for the side yard variance arose due to the inclusion of the lean-to in this proposal. The removal of the lean-to from the Application eliminates the need for the side yard variance because the garage without the lean-to will be less than 600 square feet and can be located five feet from the side yard property line.
36. The Board's decision outlined above is contingent on the lean-to not being constructed.

The Board granted the variance application in part and denied the variance application in part finding.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the Motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application in part and to deny the variance application in part.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date April 5, 2016